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Adam Keser
MORRISON & FOERSTER, LLP
1650 Tysons Boulevard
Suite 400
McLean VA 22102

In re Application of: :
PITSON, Stuart. :
Application No.: 10/509,036 : DECISION
PCT Application No.: PCT/AU2003/00388 :
Int. Filing Date: 28 March 2003 : UNDER
Priority Date: 28 March 2002 :
Atty Docket No.: 229752003700 : 37 CFR 1.137(b)
For: A METHOD OF MODULATING CELLULAR
ACTIVITY

This decision is in response to applicants' "RESPONSE TO DECISION FOR PETITION FOR REVIVAL OF AN APPLICATION ABANDONED UNINTENTIONALLY" filed 11 July 2007, which has been treated as a petition under 37 C.F.R. 1.137(b).

BACKGROUND

On 28 March 2003, applicants filed international application PCT/AU2003/00388, which designated the U.S. and claimed priority date of 28 March 2002. The thirty-month period for paying the basic national fee in the United States expired at midnight on 28 September 2004.

On 27 September 2004, applicants filed national papers in the United States Designated/Elected Office (DO/EO/US). The submission was accompanied by, *inter alia*, the basis national fee.

On 08 March 2005, the DO/EO/US mailed a Notification of Missing Requirements Under 35 U.S.C. 371 (Form PCT/DO/EO/905), which indicated that a oath or declaration in compliance with 37 CFR 1.497 and a copy of the "Sequence Listing" in computer readable form required by 37 CFR 1.821(e) must be filed.

On 17 July 2006, international application PCT/AU2003/00388 became abandoned as to the United States for failure to timely respond to the Notification of Missing Requirements.

On 16 April 2007, applicants filed, *inter alia*, a declaration, a copy of the “Sequence Listing” in computer readable form, and a petition under 37 CFR 1.137(b).

On 11 May 2007, the Office mailed a Decision on the Petition, filed 16 April 2007, explaining the declaration submitted was not properly executed and the computer readable form (CFR) of the “Sequence Listing” was not saved in the required ASCII text.

On 11 July 2007, applicants filed, *inter alia*, a second declaration, a second copy of the “Sequence Listing” in computer readable form and a second petition under 37 CFR 1.137(b).

DISCUSSION

A petition under 37 CFR 1.137(b) requesting that the application be revived on the grounds of unintentional abandonment must be accompanied by (1) the required reply, (2) the petition fee required by law, (3) a statement that the, “entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to this paragraph was unintentional” and (4) any terminal disclaimer and fee pursuant to 37 CFR 1.137(c) (where required).

Regarding items (2), (3) and (4), the applicants have provided the petition fee and the proper statement. In this application, no terminal disclaimer is required.

Regarding item (1), applicants have provided a declaration that indicates a name change to one of the inventors. What must be submitted is a petition under 37 CFR 1.182, including a statement signed by the inventor setting forth both names and the procedure whereby the change of name was effected, or a copy of the court order (See § 605.04(c) of the MPEP). Further, the applicants have provided a computer readable form (CFR) of the “Sequence Listing” that is not saved in the required ASCII text. Accordingly, applicant has not submitted the required reply in response to the Notification of Missing Requirements.

CONCLUSION

For the reasons noted above, petition to revive under 37 CFR 1.137(b) is **DISMISSED** without prejudice.

If reconsideration on the merits of this action is desired, a proper response must be filed within **TWO (2) MONTHS** from the mail date of this decision.

Any further correspondence with respect to this matter should be addressed to the Mail Stop PCT, Commissioner for Patents, Office of PCT Legal Administration, P.O. Box 1450, Alexandria, Virginia 22313-1450, with the contents of the letter marked to the attention of the Office of PCT Legal Administration.



Bena Miller
Detailee PCT Legal Examiner
Office of PCT Legal Administration



Leonard Smith
PCT Legal Examiner
Office of PCT Legal Administration

Enclosure: CFR Problem Report

SCORE

CRF Problem Report

SCORE experienced a problem when processing the following computer readable form (CRF):

Application Serial Number: 10/509,030
Filing Date: 7/11/2007
Date Processed by SCORE: 8/16/2007

Contact: Electronic Business Center: Telephone: 866-217-9197

Nature of CRF Problem:

- (circle one) Damaged or Unreadable
- Blank (no files on CRF)
- Empty file (filename present, but no bytes in file)
- Wrong file saved to CRF (invention title, docket number, or applicant(s) do not match those in official application)
- Not saved in ASCII text .DOC
- Sequence Listing was embedded in the file. According to Sequence Rules, submitted file should **only** be the Sequence Listing.
- Did not contain a Sequence Listing.
- Other:

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